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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

February 3, 1995

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

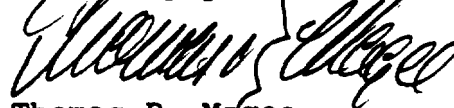
RE: MM Docket Nos. 92-266, 93-215
Opposition to NJ BPU Petition for Reconsideration
of Sixth Order on Reconsideration

Dear Mr. Caton:

Pursuant to Rule 1.429(h) of the Commission's Rules,
please find attached an original and eleven copies of the above-
referenced pleading of TKR Cable Company.

Please contact the undersigned counsel if you have any
questions regarding this submission.

Sincerely yours,



Thomas B. Magee
Attorney for
TKR Cable Company

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Implementation of Sections of
the Cable Television Consumer
Protection and Competition
Act of 1992: Rate Regulation

MM Docket No. 92-266

MM Docket No. 93-215

OPPOSITION TO PETITION FOR RECONSIDERATION

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February 3, 1995

SUMMARY OF ARGUMENT

TKR hereby files in opposition to the petition for reconsideration of the Sixth Reconsideration, improperly submitted by the New Jersey BPU in the same pleading as its application for review of the TKR Hamilton LOI Order.

In approving certain A La Carte packages, the Commission properly determined that its A La Carte standards are ambiguous. Supporting this determination are Comments filed in this rulemaking proceeding and in numerous LOI proceedings, and the dissimilar treatment accorded A La Carte packages by cable operators and assorted regulatory bodies. The BPU is mistaken in asserting that the Commission must defer to the BPU's A La Carte determinations.

The approval of certain A La Carte packages is fair to those operators who restructured their service offerings in a regulatory environment encouraging such restructuring. Regulatory consistency and other public interest considerations support New Product Tier treatment of these packages. This treatment is also consistent with the 1992 Cable Act.

Contrary to the BPU's assertion, the conditions for establishing a New Product Tier are met by the A La Carte packages at issue. Finally, TKR's experience with the Madison Square Garden Network aptly illustrates why A La Carte channels should not be returned to regulated tiers.

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In the Matter of

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the Cable Television Consumer
Protection and Competition
Act of 1992: Rate Regulation

MM Docket No. 92-266
MM Docket No. 93-215

OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to Section 1.429(f) of the Commission's rules, 47 C.F.R. §1.429(f), TKR Cable Company ("TKR") hereby files its Opposition to that portion of the "Application for Review and Motion for Reconsideration" filed December 27, 1994 by the New Jersey Board of Public Utilities ("BPU"), that constitutes a Petition for Reconsideration of the Sixth Order on Reconsideration.¹ In support of its Opposition, TKR states as follows:

¹"Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation," Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, MM Docket Nos. 92-266 and 93-215, FCC 94-286 (rel. Nov. 18, 1994) ("Sixth Reconsideration"). The BPU's Petition for Reconsideration has not yet been placed on public notice.

Improperly submitted in the same December 27, 1994 pleading is the BPU's Application for Review of the Cable Services Bureau's Letter of Inquiry determination for TKR Cable Company of Hamilton, released November 25, 1994 (LOI-93-31, DA 94-1312). Filed concurrently with the instant Opposition is TKR's Opposition to the Application for Review.

I. INTRODUCTION

In the March 30, 1994 Second Reconsideration,² the Commission established grandfathered, unregulated treatment for A La Carte packages existing prior to April 1, 1993.³ In Paragraph 51 of the Sixth Reconsideration, the Commission addressed the issue of whether to provide similar grandfathered treatment for A La Carte packages created between April 1, 1993 and September 30, 1994. The Commission concluded that grandfathered treatment would be fair for those packages that did not constitute a clear violation of its A La Carte test. The Commission held:

In some cases we think it is clear that the package at issue was not a permissible package under a fair reading of our test. In other cases, however, it is not clear how our test should be applied to the package at issue. In those cases, we think it fair, in light of the uncertainty created by our test, to allow cable operators to treat existing packages as NPTs even though it would not qualify under the rules we establish today, provided that such packages involve only a small number of migrated channels. We see little reason to require an operator to "reverse migrate" a package that was not clearly ineligible for unregulated treatment under our a la carte policy.⁴

In its Petition for Reconsideration, the BPU requested the Commission to reconsider Paragraph 51.⁵ The

²Second Order on Reconsideration, Fourth Report and Order, and Fifth Notice of Proposed Rulemaking, MM Docket No. 92-266, 74 RR 2d 1077 (rel. Mar. 30, 1994) ("Second Reconsideration").

³Id. at 1116, n.263.

⁴Sixth Reconsideration at ¶ 51 (footnotes omitted).

⁵Petition at 2, 12.

BPU requested that A La Carte operators be liable for refunds,⁶ but indicated that if the Commission "elects not to reconsider paragraph 51 of the Sixth Order on Reconsideration so as to allow rate refunds, the Board requests the FCC to order TKR and similarly situated cable operators to return previously removed a la carte channels back to their rate regulated tiers."⁷

II. ARGUMENT

A. The Commission Need Not Defer to Local Franchising Authority A La Carte Determinations

The BPU argued in its Petition that the Commission must defer to the A La Carte determinations of local franchising authorities, like itself.⁸ According to the BPU, the FCC frequently has held that the standard of review is whether "there is a reasonable basis for the local franchising authority's decision."⁹ Although appropriate for most local franchising authority determinations, this standard of review does not apply to A La Carte issues. In these instances, the Commission made clear it would reach

⁶Id. at 19.

⁷Id.

⁸Id. at 11. The BPU to date has issued numerous A La Carte rate determinations. Many of these orders, affecting TKR, are currently on appeal. See TKR Cable Company, Petition for Review of Rate Orders of State of New Jersey Board of Public Utilities, "Petition for Review of Local Franchising Authority Orders," filed by TKR on August 31, 1994.

⁹Id.

its own determination on A La Carte offerings:

One exception to the general rule of deference relates to Commission review of local franchising authorities' decisions as to whether an "a la carte" package is subject to rate regulation as a cable programming services tier. In this situation, the Commission will defer to the local authority's findings of fact if there is a reasonable basis for those findings. The Commission, however, will apply its own analysis of FCC rules and precedent to those facts to determine the appropriate regulatory status of the tier in question.¹⁰

B. The Commission Properly Determined the A La Carte Rules Are Ambiguous

In its Petition, The BPU suggested that TKR is among the "worst offenders" and "worst violators" of the A La Carte rules, and that permitting such companies to "benefit" by these rules is inequitable.¹¹ As an initial matter, TKR rejects this contention as ill-founded, as demonstrated by its Opposition to the BPU's Application for Review, filed concurrently with the instant Opposition. Moreover, aside from being ill-founded, the BPU's contention misses the point of the Sixth Reconsideration, which is that the A La Carte rules are too ambiguous to be applied fairly

¹⁰May 6, 1994 "Questions and Answers on Cable Television Rate Regulation," Response to Question 18. See also Second Reconsideration, 74 RR 2d at 1117, ¶ 199; "Century Southwest Cable Television, Santa Monica, California, Appeal of Local Rate Order of City of Santa Monica, California," Order, FCC File No. DA 95-123 (Cable Services Bureau, rel. Jan. 31, 1995).

¹¹Petition at 18, 19.

to TKR or any other operator not in clear violation.¹²

This determination that the rules are ambiguous is well-founded. Ambiguity is evidenced not only in Comments filed on the Second Reconsideration's fifteen A La Carte guidelines,¹³ but is amply demonstrated by pleadings filed in numerous LOI proceedings. In addition, and significantly, the Commission's determination that its regulations are ambiguous is entitled to substantial deference.¹⁴

Apart from the reasonableness of the Commission's determination, the BPU itself must admit that the A La Carte standards have been treated differently by both cable operators and different regulatory bodies.¹⁵ These

¹²Sixth Reconsideration at ¶ 51.

¹³See Comments referenced at Sixth Reconsideration, paras. 42-43.

¹⁴See Stinson v. United States, 113 S.Ct. 1913, 1919 (1993), quoting Bowles v. Seminole Rock & Sand Co., 325 U.S. 410, 414 (1945), and cases cited therein ("As we have often stated, provided an agency's interpretation of its own regulations does not violate the Constitution or a federal statute, it must be given 'controlling weight unless it is plainly erroneous or inconsistent with the regulation.'").

¹⁵Compare the New Jersey BPU order, "In the Matter of Rate Regulation Establishing Initial Rates to be Set on Basic Service Tier and Accompanying Equipment by Clear Cablevision, Inc., d/b/a Adelphia Cable Communications," Order Setting Initial Rates, Docket No. CR93090369 (Agenda Date: Aug. 17, 1994), with the Bureau's "Adelphia Cable Partners, L.P., South Dade County, Florida," Memorandum Opinion and Order, LOI-93-42, DA 94-1277 (C.S.B. rel. Nov. 18, 1994). Similar to the Dade County package, the A La Carte proposal approved by the BPU created 34 A La Carte channels, of which 31 were removed from CPSTs. This move eliminated all CPSTs. Only 23 regulated channels remained after restructuring, all of which were BST services. An equipment

different conclusions provide additional evidence that the rules are ambiguous.

C. The Regulatory Environment Prior to Restructuring Encouraged A La Carte Offerings

In Congressional Reports on the 1992 Cable Act, Congress found that per channel offerings enhance customer choice and encourage competition, and for these reasons encouraged unbundling of service offerings.¹⁶ Consistent with this understanding, the Commission indicated in the Rate Order¹⁷ that rate evasions through transfers of programming to A La Carte offerings may be rare, since no evidence existed that operators would, or even could, make such a shift.¹⁸ The Commission recognized that market forces can be relied upon to ensure reasonable rates for unbundled services.¹⁹ On this point, the Commission stated that consumers would act to restrain operators, since consumers are able to "choose or veto such programming on an

payment of \$6.00 per month, identical to the Dade County charge, was required to receive any A La Carte channel.

¹⁶See H.R. Rep. No. 628, 102d Cong., 2d Sess. 90 (1992); S. Rep. No. 92, 102d Cong., 2d Sess. 77 (1991).

¹⁷Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92-266, 8 FCC Rcd 5631 (rel. May 3, 1993) ("Rate Order").

¹⁸Rate Order, 8 FCC Rcd at 5916, n.1161.

¹⁹Id. at 5836, ¶ 327.

individual channel or program basis."²⁰ The Commission concluded that:

cable operators should be free to offer collective offerings at a combined price which is less than the sum of the charges for the individual services. Such discounts benefit the consumer by making premium channels more affordable and thus more widely available.²¹

For this reason, the Commission indicated that collective offerings of premium channels should be encouraged.²²

Cable operators were not only encouraged to restructure, they were required to do so in a hurry. On July 27, 1993, the Commission ordered that compliance with cable regulations be made by September 1, 1993, instead of the previously-established deadline of October 1, 1993.²³ Compliance with the "must-carry" provisions of the 1992 Cable Act placed additional operational pressures on cable operators during this period, forcing them to scramble to revise channel line-ups.

Given this regulatory setting, it is reasonable for most operators to expect they were safe in offering A La Carte packages, and it is reasonable for the Commission at this time not to penalize those operators which did not

²⁰Id. at 5916, n.1161.

²¹Id. at 5836, ¶ 327.

²²Id. at 5837, ¶ 329.

²³"Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992," Order, MM Docket No. 92-266, 73 RR 2d 16 (rel. Jul. 27, 1993).

clearly violate the rules.

D. The Commission's NPT Treatment of A La Carte Packages is Consistent with the 1992 Cable Act

The BPU argued that the Sixth Reconsideration contravenes the stated policy of the 1992 Cable Act of ensuring that "consumer interests are protected in receipt of cable service."²⁴ The BPU further argued that the decision not to require reverse migration of A La Carte channels violates the Cable Act's directive "to ensure that rates for cable programming services are not unreasonable."²⁵

Absent from the BPU's analysis of legislative directives are several equally important statutory considerations. First, one of the stated purposes of Title VI of the Communications Act is to "minimize unnecessary regulation that would impose an undue economic burden on cable systems."²⁶ Second, Congress also directed the Commission to "seek to reduce the administrative burdens on subscribers, cable operators, franchising authorities, and

²⁴Petition at 19, citing Section 2(b)(4).

²⁵Petition at 20, ostensibly citing Section 3(c)(1) of the 1992 Cable Act, but probably referring to Section 623(c)(1) of the Communications Act, as amended ("[T]he Commission shall, by regulation, establish . . . criteria . . . for identifying, in individual cases, rates for cable programming services that are unreasonable.").

²⁶Communications Act, as amended, Section 601(6), 47 U.S.C. § 521(6).

the Commission."²⁷ Third, in violation of the directive cited by the BPU, and contrary to the BPU's conclusion, the Commission would be imposing unreasonable CPST rates if cable operators were penalized for legitimate efforts to comply with ambiguous regulations. Finally, and most importantly, Section 623(h) of the Cable Act grants the Commission sole authority to establish standards to prevent evasions. Regarding evasions, Congress directed the Commission to "periodically review and revise such standards, guidelines, and procedures."²⁸ Pursuant to this authority, the Commission reviewed its standards to prevent evasions and determined that operators placing reliance on ambiguous rate evasion standards should be able to offer their A La Carte packages as a New Product Tier. This New Product Tier remedy, in accordance with well-established judicial principles, is entitled to a great amount of deference.²⁹

²⁷Id. at Section 623(b)(2)(A), 47 U.S.C. § 543(b)(2)(A).

²⁸Id. at Section 623(h), 47 U.S.C. § 543(h).

²⁹See, e.g., Columbia Gas Transmission Corp. v. FERC, 750 F.2d 105, 109 (D.C. Cir. 1984) ("The principle fairly drawn from prior cases is that the Commission has broad authority to fashion remedies so as to do equity consistent with the public interest."); Arizona Electric Power Cooperative, Inc. v. FERC, 631 F.2d 802, 809 (D.C. Cir. 1980) (per curiam) ("[I]t is not the role of the courts to second guess the Commission's judgment because we think we could devise a better solution than that which the agency has adopted so long as the agency's determination has a rational basis."); Niagra Mohawk Power Corp. v. FPC, 379 F.2d 153, 159 (D.C. Cir. 1967) ("'[T]he breadth of agency discretion is, if anything, at [its] zenith when the action assailed relates primarily . . . to the fashioning of

E. The Conditions for Establishing a New Product Tier Are Met by the A La Carte Packages at Issue

The BPU correctly reported the Commission's finding that so long as the conditions for establishing NPTs are met, NPT rates will be reasonable.³⁰ The BPU, however, erroneously concluded that A La Carte packages created from April 1, 1993 to September 30, 1994 do not meet these conditions.³¹

The BPU provided no argument in support of this conclusion, and in fact did not indicate which condition is violated. Notwithstanding the BPU's conclusion, however, none of these conditions for establishing NPTs is violated by A La Carte packages created from April 1, 1993 to September 30, 1994.

In brief, the conditions for offering a NPT are: (i) no fundamental changes may be made to BSTs and CPSTs as they existed on September 30, 1994; (ii) migration to NPTs of channels subject to regulation on September 30, 1994 is prohibited; (iii) operators must continue to market BSTs and CPSTs; (iv) charges for NPTs are not permitted without the affirmative consent of subscribers; and (v) the purchase of another tier besides BST may not be used as a precondition

policies, remedies, and sanctions . . .").

³⁰Petition at 20, citing Sixth Reconsideration at ¶ 24.

³¹Petition at 20.

to receiving a NPT.³²

By concluding that these conditions have not been met, the BPU is perhaps asserting that A La Carte channels were subject to regulation on September 30, 1994. Such an assertion, however, misses an important element of the Sixth Reconsideration; namely, that if an A La Carte package created from April 1, 1993 to September 30, 1994 does not clearly violate the A La Carte test, the A La Carte channels were not subject to regulation on September 30, 1994.

This conclusion follows from the Rate Order. In the Rate Order, the Commission established the precondition that so long as the Commission's A La Carte test is met, the Commission will not regulate A La Carte packages.³³ As discussed supra, the Sixth Reconsideration determined that for some A La Carte packages, it was impossible to tell whether the test had been met.³⁴ The Commission indicated it would be unfair to hold these A La Carte packages to the test,³⁵ and thus rejected the test for these packages. By rejecting the test, the Commission eliminated the precondition to unregulated treatment for these A La Carte packages. In summary, since A La Carte packages created between April 1, 1993 and September 30, 1994 were not

³²47 C.F.R. §76.987(b); Sixth Reconsideration at ¶¶ 25-33.

³³Rate Order, 8 FCC Rcd at 5836, ¶ 327.

³⁴Sixth Reconsideration at ¶ 45.

³⁵Id. at ¶¶ 45, 51.

"clearly ineligible for unregulated treatment,"³⁶ these packages were unregulated on September 30, 1994.³⁷

The statement in Paragraph 51 of the Sixth Reconsideration, that such A La Carte packages "would not qualify [for NPT status] under the rules we establish today" does not support a different conclusion. This statement indicates simply that if an operator wanted today to remove channels from regulated tiers to an A La Carte package, and then later move them to a NPT, the operator would be in violation of the rules.

F. Regulatory Consistency and Other Public Interest Considerations Support NPT Treatment

Assessing whether NPT treatment is appropriate, the BPU concluded that "[t]here is no valid basis" to treat A La Carte packages created between April 1, 1993 and September 30, 1994 differently from packages created after September 30, 1994.³⁸ This conclusion, however, fails to acknowledge several public interest considerations supporting NPT treatment for A La Carte packages that did not clearly violate the Commission's rules.

³⁶Id. at ¶ 51.

³⁷This unregulated, grandfathered status is entirely consistent with the unregulated, grandfathered status previously granted to A La Carte packages available on April 1, 1993.

³⁸Petition at 20.

First, the BPU implies that to be consistent, the Commission must treat packages created during these two different time periods identically. Instead, however, to be consistent, the Commission properly decided to treat them differently. Unlike packages created after September 30, 1994, packages created prior to September 30, 1994 that did not clearly violate the A La Carte test were not subject to regulation. The NPT rules provide that channels may not be removed from regulated tiers to NPTs,³⁹ but allow unregulated channels to be placed in NPTs at the operator's discretion. It would thus be inconsistent to treat regulated A La Carte packages the same as unregulated packages. Furthermore, it would be inconsistent to treat channels originating in unregulated A La Carte packages differently from unregulated channels from other sources.

Apart from considerations of regulatory consistency, other considerations support NPT treatment for A La Carte packages that do not clearly violate the rules. For instance, as noted by the Cable Services Bureau, subscriber confusion and substantial transaction costs are likely to result from reverse migration.⁴⁰ Apart from

³⁹47 C.F.R. §76.987(b)(2).

⁴⁰See, e.g., "TKR Cable of Hamilton, Hamilton Township, New Jersey, Letter of Inquiry," Memorandum Opinion and Order, LOI-93-31, DA 94-1312, at ¶ 22 (C.S.B. rel. Nov. 25, 1994). The BPU indicated that "TKR's subscribers are anticipating both a retiering and a refund." Petition at 17. This conclusion is inaccurate. TKR's communications with its subscribers are such that its customers expect neither a retiering or a refund.

considerations of subscriber confusion and transaction costs, it is important to consider the strong possibility that for TKR and other such operators, certain A La Carte services may not survive a return to a regulated tier. One final consideration is that TKR and others have been operating consistent with channel line-ups that include A La Carte packages for approximately one and one-half years. As a result, their negotiations with programmers have been substantially affected by their A La Carte offerings. To interfere with those contracts at this late date would be grossly inequitable.

G. TKR's Experience with the MSG Network Provides a Good Illustration of Why Reverse Migration is Inappropriate

The BPU contended that operators must be required to reverse migrate their A La Carte channels to protect subscribers from "exorbitant" per channel rates.⁴¹ As an example, the BPU cites TKR's experience with the Madison Square Garden Network ("MSG").⁴² In its Petition, the BPU attempted to use MSG to expose the inequity of TKR's A La Carte package, by pointing out that TKR's decision to offer MSG in an A La Carte package enabled TKR to increase its

⁴¹Petition at 21.

⁴²Petition at 21-22. MSG is a sports-oriented network that achieves moderate ratings in a limited viewing area. It has been in TKR's experience a volatile, high cost service.

charge for MSG by 60 percent.⁴³

Absent from the BPU's analysis of MSG, however, is the crucial fact that the rate TKR charges for MSG on an A La Carte basis is still almost 40 percent less than its cost. This fact shows that TKR is unable, as the BPU contends,⁴⁴ to charge whatever it likes for MSG. Instead, TKR's experience with MSG illustrates that market forces have effectively curbed its rates. TKR's experience also indicates that returning MSG to a regulated tier, as suggested by the BPU, ensures either a gross underrecovery of TKR's MSG programming costs or a substantial increase in costs to subscribers that do not care to receive the service. As a consequence, the BPU's suggestion to reverse migrate this channel would not serve to rescue TKR's subscribers from "exorbitant" rates, but instead would provide TKR with ample reason to drop the service entirely.

III. CONCLUSION

Wherefore, for the foregoing reasons, TKR respectfully requests that the Commission dismiss the BPU's

⁴³Petition at 22.


⁴⁴Petition at 22.

Petition for Review, and affirm its decision in paragraph 51
of the Sixth Reconsideration.

Respectfully submitted,

TKR CABLE COMPANY

By:


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February 3, 1995

EXHIBIT

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February 3, 1995

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

RE: Opposition to NJ BPU Application for Review
of TKR Cable of Hamilton
Letter of Inquiry Order (LOI-93-31)

Dear Mr. Caton:

Attached please find an original and four copies of the
above-referenced pleading of TKR Cable Company.

Please contact the undersigned counsel if you have any
questions regarding this submission.

Sincerely yours,



Thomas B. Magee
Attorney for
TKR Cable Company

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)

TKR Cable of Hamilton)
Hamilton Township, New Jersey)

Letter of Inquiry)

LOI-93-31

OPPOSITION TO APPLICATION FOR REVIEW

Pursuant to Section 1.115(d) of the Commission's rules, 47 C.F.R. §1.115(d), TKR Cable Company ("TKR") hereby files its Opposition to that portion of the "Application for Review and Motion for Reconsideration" ("Application") filed December 27, 1994 by the New Jersey Board of Public Utilities ("BPU"), that constitutes an Application for Review of the Memorandum Opinion and Order released November 25, 1994 by the Cable Services Bureau in the above-referenced proceeding ("Hamilton LOI Order").¹ In support

¹Improperly submitted in the same December 27, 1994 pleading is the BPU's Petition for Reconsideration of the Commission's Sixth Reconsideration. "Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation," Sixth Order on Reconsideration, Fifth Report and Order, and Seventh Notice of Proposed Rulemaking, MM Docket Nos. 92-266 and 93-215, FCC 94-286 (rel. Nov. 18, 1994) ("Sixth Reconsideration").

On January 10, 1995, TKR filed with the Commission a Motion for Extension of Time, unopposed by the BPU, to allow additional time for TKR to respond to the BPU's Application. In its January

of its Opposition, TKR states as follows:

I. ARGUMENT

A. TKR's A La Carte Package is in No Way a "Clear" Violation of the Commission's A La Carte Test

The Cable Services Bureau's actions in the Hamilton LOI proceeding are permissible if in accordance with the Commission's rules. As established below, the Bureau's Hamilton LOI Order is fully consistent with the Sixth Reconsideration.

In Paragraph 51 of the Sixth Reconsideration, the Commission separated A La Carte packages created between April 1, 1993 and September 30, 1994 into two categories: those which are in "clear" violation of the Commission's A La Carte rules and those which are not.² For those packages which did not clearly violate the rules, the Sixth Reconsideration held that New Product Tier ("NPT") treatment of these packages is appropriate, so long as such packages

10, 1995 Motion, TKR requested leave to file the instant Opposition at a date that coincides with the date TKR would be required to file an Opposition to the BPU's Petition for Reconsideration. The Commission has not yet ruled on TKR's January 10, 1995 Motion. Although the Commission has also not yet placed the BPU's Petition for Reconsideration on public notice, public notice was provided for nine other Petitions on January 19, 1995. TKR is filing the instant Opposition 15 days after the January 19, 1995 public notice. Filed concurrently with the instant pleading is TKR's Opposition to the BPU's Petition for Reconsideration. A copy of this Opposition is attached as an Exhibit to this pleading.

²Sixth Reconsideration at ¶ 51.

"involve only a small number of migrated channels."³

In its Application, the BPU contended that the Bureau's Hamilton LOI Order is inconsistent with the Sixth Reconsideration,⁴ specifically because the Bureau misapplied Paragraph 51.⁵ According to the BPU, the Bureau should have found, pursuant to Paragraph 51, that TKR's A La Carte package constituted a "clear" violation of the FCC's test.⁶ As an additional matter, the BPU requested oral argument in this proceeding pursuant to Section 1.297 of the Commission's rules.⁷

To support its contention that TKR's Hamilton system clearly violated the Commission's A La Carte test, the BPU merely restated arguments made in the proceeding currently pending before the Commission in which TKR is seeking review of the BPU's A La Carte determinations for Hamilton and for seven other TKR systems.⁸ The BPU's

³Id.

⁴Application at 1-2, 11-12.

⁵Id. at 12, 16, 17.

⁶Id.

⁷Id. at 2-3.

⁸Id. at 12-16. That the BPU's present argument is a rehashing of its previous arguments becomes apparent upon comparing the BPU's arguments in its Application for Review with arguments raised previously in two documents: (1) New Jersey BPU, "In the Matter of Rate Regulation Establishing Initial Service Rates to Be Set on Basic Service Tier and Accompanying Equipment by TKR Cable Company of Hamilton," Order Setting Initial Rates, Docket No. CR93090352 (Agenda Date: Aug. 17, 1994); and (2) TKR Cable Company, Petition for Review of Rate